

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the June 2, 2008 Task Force Meeting
DATE: June 5, 2008

Participants

The following people participated in the Task Force meeting:

Task Force Members:

Harvey Hackett	Bitterroot
Gail Patton	Sanders County Commission
Ted Williams	Flathead Lakers
Marc Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Arvid "Butch" Hiller	Mountain Water Company
Nate Hall	Avista
Fred Lurie	Blackfoot Challenge
Holly Franz	PPL Montana

Ex Officio Members

Senator Verdell Jackson	Senate District 5
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Public

John Kappas	Mountain Water Company
Brianna Randall	Clark Fork Coalition
Sylvia Reinicke	Senate Candidate
David Shively	University of Montana Department of Geography

Staff:

Curt Martin	DNRC
Tim Bryggman	DNRC
Gerald Mueller	Consensus Associates

Meeting Agenda

- May 5, 2008 Meeting Summary
- Updates
 - Membership
 - Hungry Horse water activities
 - Confederated Salish and Kootenai Tribal Water Right Compact
 - Water study scope of work and budget
 - Bostwick vs. DNRC Decision
- Water Right System Policy Paper
- Water Policy Interim Committee Draft Findings and Options for Recommendations
- Technical and Policy Conferences
- Public Comment
- Next Meeting

May 5, 2008 Meeting Summary

The Task Force made one change to the May 5, 2008 meeting summary. On page 3 in the comment by Senator Jackson the word “could” should be changed to “would”. The comment as changed reads:

When I carried the bill amending the state’s authority to lease water obtained through contracts for water stored in federal reservoirs, I assumed that the state would subcontract the leasing function.

Updates

Membership - Gerald Mueller reported that DNRC Director Mary Sexton has requested recommendations for additional members of the Task Force. Mr. Mueller contacted George Culpepper, Jr., Government Affairs Director Northwest Montana Association of REALTORS, to determine if he would be interested in representing his group on the Task Force. Mr. Culpepper is interested. Gail Patten noted that Steve Hughes was not re-elected to the Flathead Joint Board of Control. Finally, Curt Martin stated that he has taken a hearings examiner position within DNRC as so after this week he will no longer be working with the Task Force.

Comment - We should also see if a member of the state association of well drillers would be interested in membership on the Task Force.

Task Force Action - *Those members present agreed to recommend Mr. Culpepper’s appointment to the Task Force to Mary Sexton. They directed Mr. Mueller to contact the Flathead Irrigation Project Joint Board of Control regarding its Task Force representative and the state well drillers association. They also thanked Curt Martin for his service to the Task Force.*

Hungry Horse Water Activities - Curt Martin and Tim Bryggman provided the update. DNRC is currently reviewing a draft cost agreement with US Bureau of Reclamation (BOR) for the entire process of developing a contract for Hungry Horse water. BOR proposes in the draft agreement that the state pay \$260,000 for cost allocation study, the same price BOR quoted in 2006. DNRC is seeking two changes in the draft agreement. The first is allowing sources other than state funds to pay for the contracting. The second is dropping references to irrigation as a potential use of Hungry Horse water. DNRC is seeking a cost allocation study based only on two new uses of Hungry Horse water, municipal and industrial.

John Tubbs received Gerald Mueller’s letter on behalf of the Task Force asking the questions about management of Hungry Horse water obtained via a BOR contract and water right permit mitigation requirements. In response, Mr. Tubbs had representatives of three DNRC bureaus, State Water Projects, Water Management, and Water Rights, meet to discuss these topics.

Question - Because of the higher commodity prices, we are seeing an increase in the acreage of land farmed in the Flathead Valley. You said that the cost reallocation study will not address irrigation?

Answer - That is correct. If irrigation is included as a purpose for Hungry Horse water, the contracting process will be more complicated. Before allocating costs to irrigators, BOR would have to do a study to determine their ability to pay them.

Comment by Gerald Mueller - Our past considerations indicated that additional irrigable acres are limited to the Confederated Salish and Kootenai Reservation. The Tribes have raised water for irrigation in compact-related discussions.

Question - Are there irrigable lands downstream of Missoula?

Answer by Gail Patten - There is a little bit downstream. These acres are frequently being looked at for subdivisions.

Confederated Salish and Kootenai Tribal Water Right Compact - Gerald Mueller reported on the most recent negotiating session between the Reserved Water Rights Compact Commission and the Confederated Salish and Kootenai Tribes. The session focused on four issues: unitary water management, extension of the life of the Compact Commission beyond 2009, accelerating work on the compact, and public meetings regarding the compact. Regarding unitary management, the state and the tribes professed agreement on five topics and disagreement on one. The five were:

- The unitary system should be codified in both state and tribal law.
- The management board should be staffed equally by state and tribal personnel who would act independently of state agencies and the tribal council.
- The ongoing expenses of the management board should be funded equally by the state and the tribes.
- There should be an expedited process for permitting singly family wells. Existing uses should be protected in areas that with surface and ground water interactions or that are otherwise vulnerable. The technical team will consider the 35 gpm/10 acre feet per year ground water development permit exemption.
- Surface and ground water should be managed conjunctively.

The disagreement was about the make up of the management board. The tribes support a five member board, two appointed by the state, two by the tribal council and one by the federal government. The tribes prefer including a federal government representative because of the federal trust responsibility. A federal representative would help protect the interests of individual allotment holders. The state advocates a four member board, two appointed by the state, two by the tribal council. The state is concerned that including a federal representative would introduce too much delay in the board's decision making. Limiting voting members to an equal number of state and tribal representatives would also likely result in the board working by consensus. The state is willing to discuss including a federal government representative in a non-voting capacity.

The tribes supported a bill before the 2007 legislature that would have extended the Compact Commission. The bill passed the Senate but died in a House committee. The tribes want the state to commit to supporting an extension now. The Compact Commission's position is that if progress is being made, it will support an extension.

The Compact Commission agreed to consider a tribal proposal for accelerating the negotiating schedule. Negotiations are now occurring monthly.

The tribes stated that they would be conducting meetings to inform its members and the interested public about the compact and invited state participation in them. The Compact Commission agreed to consider public meetings.

The tribes also agreed to the state's suggestion to begin reducing areas of apparent agreement to writing to ensure that the agreement is real and not based on miscommunication.

Question - How would a unitary system of water management work?

Answer - I don't know. This would be a good question for a public meeting. There are existing agreements with the state regarding joint management of fish and wildlife and law enforcement

on the reservation. Tribal members accused of misdemeanors are tried in tribal courts and of felonies in state district court.

Comment - Presently, no controls exist on ground water development on the reservation.

Comment - I am hopeful that a negotiated compact will not be brought to the legislature in March or April so there would be little time to consider it.

Comment - Approval by the legislature is not the end of the compacting process. Compacts must also be approved by the Congress and the Montana Water Court. The Fort Peck Compact was negotiated in 1985, but the Congress has not yet approved it. DNRC will be creating a new bureau to work in implementation of water right compacts.

Comment - I do not believe that the compact can be completed before the Compact Commission sunset date in 2009. The Task Force should support its extension.

Comment - Before we act on this suggestion, I would like to discuss it with the Compact Commission.

Comment by Gerald Mueller - If we invite a representative of the Compact Commission and the tribes, we might also ask them to discuss an outline of the compact that would set forth the items it will address.

Task Force Action - Those members of the Task Force present requested Mr. Mueller to invite a representative of the Compact Commission and the tribes to the July meeting to discuss extension of the Compact Commission and an outline of the compact.

Water Study Scope of Work and Budget - Marc Spratt presented a scope of work and budget for the study addressing the value of water that the Task Force requested at its May meeting. See Appendix 1.

Comment - Sources of information for this study might include United States Geological Service (USGS) water use reports that are issued every five years and reports from the Western Water Policy Advisory Committee.

Comment - Another source might be the state and national Chambers of Commerce.

Comment - The terms of water right leases are not generally available to the public. Leases by the Montana Department of Fish, Wildlife and Parks reflect unique circumstances and not a broader market. The 2007 legislature authorized a \$200,000 study of the economics of irrigation in Montana. This study is in the contracting process now.

Gerald Mueller passed out copies of a memo from the Montana Association of REALTORS® to the Water Policy Interim Committee (WPIC) addressing the comparison of costs of exempt wells and public water supply systems. This memo will be presented to WPIC and discussed at its June 10 meeting in Helena. The memo is available on the WPIC web site at: http://leg.mt.gov/content/lepo/2007_2008/water_policy/staffmemos/costcomparisonmar.pdf.

Comment - There is a growing concern about discharge of treated sewage effluent by the cities of Kalispell and Whitefish into the Flathead River. Discharging the output of more advanced individual septic systems back into the ground maybe preferable to discharging the existing central sewage treatment plants into the river. The sewage treatment plants in the Flathead are

at or nearing capacity. In addition to the cost of public water systems versus individual wells, I would like the study to address community sewage versus individual septic systems.

Response - If this analysis is added, some other planned work product would have to be deleted from the study.

Comment by Curt Martin - To direct a contract to a specific contractor, state rules require grants in excess of \$2,000 to have a sole source justification. Some day an auditor may question giving a sole source grant to the firm of one of the Task Force members. Today is the deadline for internal DNRC review of expenditure requests. I am not saying that approving this grant is impossible, but changing the scope of work will require amending the contract and additional delay.

Comment - I doubt that the amount of work called for in the scope of work can be done for \$5,000, so RKL Hydro would not receive a undue benefit for implementing it.

Task Force Action - Those members of the Task Force present agreed to the study plan as presented by Marc Spratt and recommended that the DNRC approve use FY 2008 Task Force funds on a sole source basis to RKL Hydro to implement the plan.

Bostwick vs. DNRC Decision - Gerald Mueller passed out copies of his May 19 memo which provided excerpts of the conclusions of law from the order in Bostwick vs. DNRC issued by District Court Judge Brown. A copy of the memo is included below in Appendix 2. Judge Brown ruled that DNRC must issue the permits because DNRC failed to meet statutory permit deadlines and had determined the water right permit application to be correct and complete. The Judge found that DNRC's decision that the application was correct and complete satisfied the statutory criteria necessary to issue the permit.

Comment - DNRC interprets this ruling as applying only in Gallatin County. It has appealed the ruling to the Montana Supreme Court.

Question - Does the Supreme Court have a deadline for issuing a decision?

Answer by Holly Franz - No. A decision will probably take at least a year. The legal dispute will likely begin with whether DNRC's appeal is ripe, because Judge Brown's order has not yet been implemented.

Water Right System Policy Paper

The Task Force reviewed the draft paper dated April 2008, which had been circulated previously to Task Force members. Task Force member comments were as follows:

- On page 1, add a by-line and consider a different title. Brianna Randall volunteered to suggest alternative titles.
- On page 3, change the last sentence of the paragraph under the heading "Water Reservations" to read, "No reservations have been granted in Montana basins west of the Continental Divide to reserve water for future use."
- On page 5, change the word "no" to "a limited" in the sentence "It plays no role in enforcing pre-1973 water rights."
- On page 7, in the second to the last sentence of the first incomplete paragraph, change "speed" to "expedite".
- On page 7, in the second sentence of the second complete paragraph, add the word "with" between "charged" and "distributing".
- On page 7, in the third completed paragraph and any other time it appears, change "unalienable" to "inalienable".

- On page 8, spell out MBMG and delete footnote 30 because it is addressed in the new section on Adverse Effects.
- On page 9, in the new section replace “adverse effect” with “adverse affect”, because this is the common usage in spite of the incorrect grammar.
- On page 9, in the second sentence of the new section delete the words “water to support the new or changed use is both physically and legally available and that”.
- In this same section, replace “DNRC evaluates the legally available” with “DNRC evaluates the adverse affect”.
- On page 10, under the heading “Domestic Water Supply”, change the first three sentences to read:
As previously noted, Article II, Section 3 of the Montana Constitution recognizes the right to pursue “life’s basic necessities” as one of Montanans inalienable rights. Some may argue that because water is a basic necessity, Montana water law should give domestic use priority. All other states subject to the prior appropriation doctrine except Washington provide such a priority to some extent in either their constitution or by statute.
- On page 12, in the second paragraph change the third sentence to read “As written above, before DNRC issues a permit to appropriate water or to change an existing water right, it must determine whether any existing right would be adversely affected.”
- On page 13, the first sentence in the first completed paragraph, insert the following sentence, “Use outside the home is more consumptive.”

WPIC Draft Findings and Options for Recommendations

Gerald Mueller passed out copies of a WPIC document containing draft findings and recommendations that WPIC will consider by at its June 10, 2009 meeting. This document is available at:

http://leg.mt.gov/content/lepo/2007_2008/water_policy/staffmemos/06102008findingsandoptions.pdf.

Comment - Presently, the Montana Bureau of Mines and Geology (MBMG) does not conduct ground water pumping tests as a part of its aquifer characterization work.

Comment - The state of Oregon requires a pump test from ground water permittees every seven years. These data are put into a publicly accessible data base.

Comment - WPIC appears to support additional funding for MBMG for a statewide ground water study. WPIC’s expectations about what MBMG can achieve for the amount of additional funds under discussion is likely excessive. MBMG will not be able to collect enough detailed information over a sufficient duration to satisfy permit application requirements.

Comment - I agree that the ground water characterization data collected by MBMG will not be adequate for permit applications. However, it does provide DNRC permit reviewers a bench mark for application reviews. It also helps estimate aquifer recharge rates by providing data on how fast ground water moves and its circulation patterns.

Comment - The Task Force should invite a representative of to its next meeting to discuss what can and cannot be addressed in its ground water characterization work.

Task Force Action - Those members of the Task Force present agreed that Gerald Mueller, Holly Franz, or Brianna Randall should present testimony on its behalf at the June 10, 2009 WPIC meeting making three points:

- *WPIC should be made a permanent interim committee;*
- *MBMG should be given additional funding to collect ground water data for its aquifer characterization studies; and*
- *The additional funding should enhance MBMG's existing program rather than creating a new one.*

Those present also agreed to invite an MBMG representative to attend the July Task Force meeting to discuss what can and cannot be addressed in its ground water characterization work.

Technical and Policy Conferences

The Task Force discussed and listed the following as possible topics for technical and policy conferences for the next fiscal year.

Technical Conference

- How ground water permits are acquired under HB 831;
- Case studies of ground and surface water interactions, e.g. Eastern Snake River Plain, the Edwards aquifer in Texas, the Ogallala aquifer, or a Florida/Georgia aquifer; and
- Pharmaceutical contamination of ground water.

Policy Conference

- Basin watershed group projects and research;
- Conjunctive management; and
- How water right decrees will be implemented after the ongoing adjudication issues final decrees.

Public Comment

There was no additional public comment.

Next Meeting

The next meeting is scheduled for 9:30 a.m. on Monday, July 14, 2008 in the Mountain Water Company conference room at 1345 West Broadway, Missoula, Montana. Invitations will be extended to the following for agenda items:

- John Tubbs, DRNC's Water Resources Division Administrator, will be invited to the meeting to discuss DNRC's legislative proposals for the 2009 legislative session.
- Susan Cottingham, Reserved Water Rights Compact Commission Program Manager, and a will be invited to discuss extension of the Compact Commission along with an outline of the compact. A representative of the Confederated Salish and Kootenai Tribes will also be invited to address these topics.
- An MBMG representative to discuss its ground water characterization program, and, specifically, what can and cannot be addressed in its ground water characterization work.

Appendix 1
RLK HYDRO
INC.

Hydrology, Engineering and Environmental Consulting

May 19, 2008

Curt Martin
DNRC Water Management Bureau
1424 9th Avenue
PO Box 201601
Helena MT 59620-160

RE: CFBTF Scope of Work and proposal for Preliminary Water Supply Cost Analysis

Dear Curt: The following is a scope of work and proposal for the project envisioned at the May 5, 2008 Task Force Meeting. The following six tasks will be undertaken as a Preliminary Water Supply Cost Analysis. The work will be primarily completed by our summer intern under the supervision of a Senior Hydrogeologist and Senior Professional Engineer licensed in Montana.

- 1) Review the price of water leases that have been negotiated in the Clark Fork River basin;
- 2) Examine the cost of providing water via private water systems in the basin;
- 3) Estimate the value of water for generating hydroelectricity at basin dams;
- 4) Discuss the potential sources of water for new large, planned subdivisions in the basin;
- 5) Provide a comparison of the cost of community water systems with individual wells in the basin.
- 6) Estimate the demand for Hungry Horse water over the next 50 years

The budget to complete the Preliminary Water Supply Cost Analysis is \$5,000. Sincerely,

Marc M. Spratt
President

cc file

Enclosure(s) Proposal to Prepare a Preliminary Water Supply Cost Analysis for the Clark Fork Basin, Montana.

RLK HYDRO INC.

Proposal to Prepare a Preliminary Water Supply Cost Analysis for the Clark Fork Basin, Montana.

Prepared for: The Clark Fork Basin Task Force

Submitted to: The Montana Department of Natural Resources and Conservation Helena, Montana

**Prepared by: RLK Hydro, Inc.
Kalispell, Montana**

Revised : May 28, 2008

1) Review the price of water leases that have been negotiated In the Clark Fork River basin;

Methodology: Using public sources, identify the number of water leases that have been executed during the past ten years. For each lease for which information is publicly available, identify the amount of water leased, the duration of the lease and the price of the lease.

Resources: Under the direction of a Senior Hydrogeologist, the Geological Engineer Intern will spend approximately 24 hours examining various data sources for water leasing activity. Potential data sources are the DNRC water right records of temporary changes, and permanent changes to beneficial uses of mitigation or in-stream flow. Other data include lease agreements from State water projects and current or previous similar analyses by DNRC or other State and Federal agencies.

2) Examine the cost of providing water via private water systems in the basin;

Methodology: Using DEQ permit data, identify and contact the private entities operating a public or community water system (defined as public water supplies by DEQ) in the basin. Determine the amount that customers/participants in these systems are charged for water service.

Resources: Under the direction of a licensed Senior Engineer, the Geological Engineer Intern will utilize approximately 40 hours identifying private water systems. Once identified, these systems, or a range of systems, will be contacted to determine the capital cost, if available, and the operating cost.

3) Estimate the value of water for generating hydroelectricity at basin dams;

Methodology: Contact Avista, PPL Montana and the Bureau of Reclamation to solicit the value they place on water used to generate electricity at their Kerr, Thompson Falls, and Noxon Rapids dams. Review published literature for similar values for water used for hydro generation in the Pacific Northwest. In addition FERC reports will be reviewed and regional power costs used to estimate the amount and approximate value of hydroelectric power generated in the basin. The Forest Service and Park Service will also be contacted to obtain an estimate of small micro hydro generation amount and value.

Resources: Under the direction of a licensed Senior Engineer, the Geological Engineer Intern will use approximately 16 hours contacting, primarily by phone, the private and public entities within the basin generating hydroelectric power. The entities will be identified through published reports and by referral.

4) Discuss the potential sources of water for new large, platted subdivisions in the basin;

Methodology: Based on subdivision approvals issued by DEQ, identify the sources of water for subdivisions that have been platted in the last five years in the Clark Fork River basin. This information will be compared to reports from State and Federal Agencies allocating domestic water sources to domestic use on a state, regional or national basis. County Planning offices within the basin may also be contacted for subdivision submittal information.

Resources: The Geological Engineering Intern will utilize approximately 24 hours under the direction of a certified Senior Hydrogeologist identifying and characterizing subdivision water supply sources.

5) Provide a comparison of the cost of community water systems .Sb individual wells in the basin.

Methodology: Estimate the range of costs for individual wells in the Clark Fork basin and compare them to the costs of public/community water systems. Drilling costs throughout the basin will be estimated through calls to local drillers in each of the counties and average well depths determined based on data in GWIC. Individual well costs as estimated will be compared to the public water system costs identified in Task 2.

Resources: The Geological Engineering Intern will use approximately 8 hours estimating well construction costs and preparing a comparison to the data developed in Task 2. This will be completed under the direction of a licensed Senior Engineer who is expected to utilize up to 4 hours guiding the comparison.

6) Estimate the demand for Hungry Horse water over the next 50 years.

Methodology: Using available population and economic forecasts for the basin and water use data, estimate the amount of water demand growth in the (Mast Fork basin for the next 50 years.

Resources: A licensed Senior Engineer will utilize approximately 4 hours working with the Geological Engineering Intern who will use approximately 16 hours completing this task. The team will obtain population estimates for the basin from several sources, US. Census, Montana Department of Commerce, and University of Montana. Water requirements will be based on USGS, DNRC, Municipal and Water District records within the basin. The two estimates, population growth and water use will be combined to estimate water required for the next 50 years in 10 year increments.

7) Summary Report Preparation

Methodology: Results from Tasks 1 - 6 will be assembled in a final report for review by the Clark Fork Basin Task Force and presented by the Geological Engineering Intern to the Task Force. The report will be revised according to the review comments and presented to the Task Force and DNRC.

Resources: A licensed Senior Engineer will utilize approximately 4 hours working with the Geological Engineering Intern who will use approximately 32 hours completing this task. Graphics support by a CADD technician is expected to require approximately 4 hours for report graphics.

Project Budget

The estimated project budget by task, staff person, hours allocated and hourly rate is shown in Table 1. Costs for insurance, facilities and equipment are included in the hourly prices in Table 1. Copying costs for review and up to 10 copies of the final report are included in the hourly rates. Contract administration costs are included in the administration fee of 15% of the direct costs. This project entails limited mileage expenses which are included in the salary rate.

The budget to complete the Preliminary Water Supply Cost Analysis is \$5,000.

Table 1. Budget Detail.

Task	Description	Quantity	Unit	Unit Cost	Extended Cost	Total
1) The price of water; leases negotiated in the Clark Fork River basin	Hydrogeologist II Technician I	1.00 24.00	hr hr	\$ 100.00 \$ 25.00	\$ 100.00 \$ 600.00	\$ 700.00
2) The cost of providing; water via private water systems in the basin	Sr. Engineer III Technician I	1.00 40.00	hr hr	\$ 100.00 \$ 25.00	\$ 100.00 \$ 1,000.00	\$ 1,100.00
3) The value of water for generating hydroelectricity at basin dams;	Senior Engineer II Technician I	1.00 16.00	hr hr	\$ 75.00 \$ 25.00	\$ 75.00 \$ 400.00	\$ 475.00
4) The potential sources; of water for new large, platted subdivisions in the basin	Hydrogeologist II Technician I	4.00 24.00	hr hr	\$ 100.00 \$ 25.00	\$ 400.00 \$ 600.00	\$ 1,000.00
5) A comparison of the cost of community water systems with individual wells in the basin.	Senior Engineer II Technician I	4.00 8.00	hr hr	\$ 75.00 \$ 25.00	\$ 300.00 \$ 200.00	\$ 500.00
6) Estimate the demand for Hungry Horse water over the next 50 years	Senior Engineer II Technician I	4.00 16.00	hr hr	\$ 75.00 \$ 25.00	\$ 300.00 \$ 400.00	\$ 400.00
Summary Report	Senior Engineer II Technician I Cadd	4.00 32.00 4.00	hr hr hr	\$ 75.00 \$ 25.00 \$ 45.00	\$ 300.00 \$ 800.00 \$ 180.00	\$ 1,280.00
					SUB-TOTAL	\$ 4,355.00
Administration	Administration		% of sub-total	14.8%	\$ 645.00	\$ 645.00
					RLK TOTAL	\$ 5,000.00
					GRAND TOTAL	\$ 5,000.00

Appendix 2
Upper Clark Fork River Basin Steering Committee

C/O Gerald Mueller
440 Evans
Missoula, MT 59801
(406)543-0026

MEMORANDUM

Date: May 19, 2008
To: Upper Clark Fork River Basin Steering Committee
From: Gerald Mueller
Re: Bostwick versus DNRC

In his opinion dated May 12, 2008, District Court Judge Brown ordered DNRC to "...immediately issue the Water Use Permit determined by the agency to be 'correct and complete' in the form and in the amount as requested by Bostwick." The following are excerpts from the conclusions of law in the opinion.

17. Whatever route the application takes through the foregoing process •objection or no objection --the DNRC must ultimately decide, *within the time allowed by law*, whether the permit should issue. To that end, the DNRC bases its decision on the same statutory factors used to determine that the application is ■correct and complete. • ●
●85-2-311, and -343, MCA.

18. The statute makes clear that the agency ■shall• take ■action on [the] application for permit• within 120 days of notice of publication of the application if no objections are filed and within 180 days if objections are filed. If the DNRC determines that the application is ■extraordinary,• it has the authority to extend the foregoing deadlines ■b/y not more than 60 days.

Action on application for permit...(1) The department shall grant, deny, or condition an application for a permit or change in appropriation right in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case [objections or no objections] the time may be extended upon agreement of the applicant or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, may be extended by not more than 60 upon order of the department. If the department orders the time extended, it shall serve notice of the extension and the reasons for the extension by first class mail upon the applicant and each person who has filed an objection. - -

● 85-2-310(1), MCA (emphasis added).

50. The Court also rejects the DNRC's argument that Bostwick did not meet the statutory criteria for issuance of permit. The DNRC determined, following over one (1) year of study and review of data, analysis and other technical data, including additional data supplied at its request, that Bostwick's application was "correct and complete."

51. As stated, "correct and complete" is a statutorily defined term:

"Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

§ 85-2-102(8), MCA (emphasis added). The term "substantial credible information is, in turn, defined by statute as follows:

"Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

Id., subsection (22) (emphasis added).

52. This Court concludes that the DNRC, after study of this application, determined that it contained probable, believable facts sufficient to support a reasonably legal theory upon which the DNRC should proceed with the issuance of the permit. In reaching this conclusion, this Court takes judicial notice of the provisional nature of permits issued under the Act and the protections afforded by law to prior appropriators. This Court also notes that senior water right holders can file objections to a permit if it is concerned about agency action, or inaction.

62. Finally, this Court rejects the DNRC's argument that it lacks sufficient time or resources to discharge its duties. The evidence is clear that the DNRC reviewed and studied the application for over one year before determining the Application correct and complete. Regardless, any practical difficulties the DNRC faces, due to insufficient resources, the tremendous number of applications to process, or otherwise, do not override the [DEQ's] statutory obligation to issue a permit once it is (sic) found an application to be acceptable. See *Cameron Springs*, Order, p. 5.